



24 APR 2003

Diana Hamlet-Cox
INCYTE GENOMICS
3160 Porter Drive
Palo Alto, CA 94304

In re Application of
TANG *et al*
U.S. Application No.: 09/763,335
PCT No.: PCT/US99/19072
Int. Filing Date: 19 August 1999
Priority Date: 21 August 1998
Attorney Docket No.: PF-0572 USN
For: HUMAN CELL SIGNALING PROTEINS
(CSIG)

**DECISION ON
PETITION UNDER
37 CFR 1.182**

This decision is in response to the "Petition to Withdraw Improper Holding of Abandonment" filed 19 February 2003 which has been treated as a petition under 37 CFR 1.8(b). No fee is required.

BACKGROUND

On 09 December 2002, a decision granting applicants' petition under 37 CFR 1.182 was mailed. However, the above-captioned application was abandoned for failure to timely respond to the Notification of Defective Response (Form PCT/DO/EO/916) dated 08 April 2002.

On 19 February 2003, applicants submitted the instant renewed petition which was accompanied by, *inter alia*, copies of papers purportedly filed 08 May 2002 and a copy of counsel's Docketing Sheet printed on 10 May 2002.

DISCUSSION

A review of the above-captioned application file reveals that there was no record of an answer to the Form PCT/DO/EO/916 dated 08 April 2002 until 11 November 2002. Accordingly, the above-captioned application was properly abandoned for failure to timely respond to an Office communication.

In the present renewed petition, applicants assert that a timely response was submitted on 08 May 2002. Applicants claim that the original postcard receipt was not returned from the USPTO and suggest that this response may have been lost by the USPS or the USPTO. Therefore, applicants' request withdrawal of the notice of abandonment pursuant to 37 CFR 1.8.

37 CFR 1.8(b) states, in part:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned . . . the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Commissioner to the previous timely mailing or transmission . . .

In the instant petition, applicants have met all of the requirements listed above for a grantable petition. Applicants have provided the requisite statement, and a copy of the documents purportedly filed 08 May 2002. In the Transmittal Fee Sheet, a signed Certificate of Mailing dated "05/08/02" and signed by Emma Durrell was listed. Applicants also included a copy of the docket record for the above-identified application dated 10 May 2002 showing that a response was mailed 08 May 2002. This is sufficient to meet the requirements of 37 CFR 1.8(b).

CONCLUSION

For the reasons above, applicants' petition to withdraw the holding of abandonment is hereby **GRANTED**.

Applicants have completed the requirements for acceptance under 35 U.S.C. 371(c). The application has an international filing date of 19 August 1999, under 35 U.S.C. 363, and a 35 U.S.C. 371 date of 15 October 2001.

This application is being forwarded to the National Stage Processing Division of the Office of PCT Operations for continued processing.


James Thomson
Attorney Advisor
PCT Legal Office

Tel.: (703) 308-6457